



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Hillside Autos, LLC

Case No. TR-13-0026

FINAL DECISION

On July 22, 2013, Kayla Faris filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Hillside Autos, LLC. Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Reporter, a newspaper published in Fond du Lac County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by November 11, 2013. No additional claims were filed. The claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on December 18, 2013. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Kayla Faris
N4571 Sheehan Lake Lane
Campbellsport, WI 53010

Joshua Zweifel
Hillside Autos, LLC
W7398 East Lamartine Drive
Fond du Lac, WI 54937-9139

Jafar Nikkhab
Hillside Autos, LLC
W665 State Road 23
Saint Cloud, WI 53079-1535

Aegis Security Insurance Company
P. O. Box 3153
Harrisburg, PA 17105

FINDINGS OF FACT

1. Hillside Autos, LLC (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at W665 State Road 23, Saint Cloud, Wisconsin. The dealership is out of business.

2. The Dealer had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force from February 10, 2012, until February 9, 2013 (Bond #524794 from Aegis Security Insurance Company).

3. On August 14, 2012, Kayla Faris (Faris) purchased a 2005 Ford Five Hundred automobile, vehicle identification number 1FAFP28165G170463, from the Dealer. According to the purchase contract, Faris paid \$3,548.94, including taxes and registration fees, for the vehicle. A Wisconsin Buyers Guide subsequently provided by the Dealer to an investigator for the Department disclosed the vehicle's condition as having a shifting problem and abnormal noise or vibration. These problems were explained as "Trans bearing bad needs to be replaced." Faris stated in a complaint filed against the Dealer with the Department that she was told by the Dealer that the vehicle needed a \$200.00 repair. The mileage on the vehicle was disclosed as 298,012 miles at the time Faris purchased it.

4. After Faris purchased the vehicle from the Dealer, she discovered the transmission problem would be a more costly repair than she understood from the Dealer. On December 27, 2012, Faris filed a complaint against the Dealer with the Department. In the complaint, Faris alleged the transmission repair would "cost up to \$7,500.00 plus [the] price of the transmission." No support for this estimate was included with the complaint.

5. The Department investigator assigned to Faris' complaint contacted the prior owner of the vehicle and inquired regarding the mechanical condition of the vehicle at the time he sold it. The previous owner responded that he had been told that the noise "was likely an 'output shaft bearing' failure" and the cost to repair it would be between \$1500 and \$2000. Because of the high mileage on the vehicle, the previous owner decided to not have the vehicle repaired and sold it to an auto salvager. There is no indication that the title for the vehicle was branded as "junk" or "salvage." The dealership had closed by the time Faris filed her complaint against the Dealer, but the investigator was able to contact one of the former Dealer principals to discuss the complaint. No resolution of Faris' complaint was reached.

6. On June 14, 2013, Faris filed a claim against the Dealer's surety bond. The amount of the claim is \$1,900.00, which presumably is the cost of having the transmission repaired. On July 22, 2013, Faris filed an amended claim against the Dealer's surety bond. The amount of the amended claim is \$5,448.94 and is itemized as \$3,548.94, which was the purchase price of the vehicle, plus the \$1,900.00 for the estimate of the cost to repair the transmission.

7. The Dealer did disclose on the Wisconsin Buyers Guide that the vehicle had abnormal noise and vibration caused by a bad transmission bearing that needed to be replaced. There is a dispute whether Faris signed the Wisconsin Buyers Guide. Faris alleges that her signature on the Wisconsin Buyers Guide is a forgery. Regardless, Faris admits being told by the Dealer that the vehicle had a transmission problem. The dispute is whether the extent of the problem was disclosed. Faris states that she was told by the Dealer that the cost to repair the problem would be \$200.00. Based on Faris' statement, the Dealer failed to accurately disclose the condition of the vehicle at the time it was offered for sale. The Dealer's failure to make an accurate disclosure constitutes a violation of Wis. Admin Code § Trans 139.04. Faris sustained a loss as the result of the Dealer's violation of Wis. Admin Code § Trans 139.04. The Dealer's violation of Wis. Admin Code § Trans 139.04 would be grounds for the suspension or revocation of its motor vehicle dealer license.

8. Faris' amended bond claims seeks reimbursement both for the cost of repairs and the purchase price of the vehicle. The loss sustained by Faris as the result of the Dealer's violation of Wis. Admin Code § Trans 139.04, is the amount of money it would cost to put the vehicle into the condition warranted by the Dealer or the purchase price of the vehicle, whichever is less. The purchase price of the vehicle was \$3,548.94. According to Faris's statement on the bond claim, the cost to repair the vehicle is \$1,900. Accordingly, the loss sustained by Faris' appears to be the amount it would cost to repair the vehicle. However, Faris has not submitted any documentation to support the amount for this item in her bond claim.

9. Kayla Faris sustained a loss as a result of an act of the Dealer. However, at this time she has not submitted sufficient documentation to determine the amount of her claim. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Aegis Security Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)].*

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to Faris' claim, the Dealer violated Wis. Admin Code § Trans 139.04. A violation of Wis. Admin Code § Trans 139.04, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Kayla Faris sustained a loss as a result of this violation. However, she has not submitted documentation that would support a finding for the amount of the loss she sustained.

CONCLUSIONS OF LAW

1. The claim of Kayla Faris arose on August 14, 2012, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Aegis Security Insurance Company covers a one-year period commencing on February 10, 2012. The claim arose during the period covered by the surety bond.

2. Kayla Faris filed an amended claim against the motor vehicle dealer bond of the Dealer on July 22, 2013. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Kayla Faris sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. However, Kayla Faris has not submitted sufficient documentation to determine the allowable amount of her claim.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Kayla Faris against the motor vehicle dealer bond of Hillside Autos, LLC, is **DISALLOWED** for lack of documentation to determine the amount of the loss sustained by Kayla Faris.

Dated at Madison, Wisconsin on February 7, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.